



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

(703) 583-3800

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Fahs
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
E.M. Gray & Son, Inc.
FOR
E.M. Gray & Son, Inc.
VPDES Permit No. VAR05
Registration No. VAR051082**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and E.M. Gray & Son, Inc., regarding the E.M. Gray & Son facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "CB-TMDL" or "TMDL" or "Total Maximum Daily Load" means the Chesapeake Bay, Total Maximum Daily Load: the calculation of the maximum amount of a pollutant that a waterbody in the Chesapeake Bay watershed can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges, load allocations (LAs) for

nonpoint sources and/or natural background, and must include a margin of safety (MOS) and account for seasonal variations.

3. "CSCE" means comprehensive site compliance evaluation.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means the discharge of a pollutant.
7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "DMR" means Discharge Monitoring Report.
9. "E.M. Gray & Son, Inc." is a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. E.M. Gray & Son, Inc. is a "person" within the meaning of Va. Code § 62.1-44.3.
10. "Facility" or "Site" means the E.M. Gray & Son facility located at 16440 Industrial Dr., Milford, Virginia, from which discharges of stormwater associated with industrial activity occur.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expires on June 30, 2019. E.M. Gray & Son, Inc. applied for registration under the Permit and was issued Registration Number VAR051082 on August 12, 2014.

15. "Registration statement" means a registration statement for coverage under an industrial stormwater general permit.
16. "Regulation" means The General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater Associated with Industrial Activity," 9 VAC 25-151-10, *et seq.*
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
19. "SWP3" or "SWPPP" means Stormwater Pollution Prevention Plan.
20. "Va. Code" means the Code of Virginia (1950), as amended.
21. "VAC" means the Virginia Administrative Code.
22. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. E.M. Gray & Son, Inc. owns and operates the E.M. Gray & Son facility located at 16440 Industrial Drive, Milford, Virginia, which discharges stormwater associated with industrial activity.
2. The Permit allows E.M. Gray & Son, Inc. to discharge stormwater associated with industrial activity from the E.M. Gray & Son facility to an unnamed tributary of the Mattaponi River, in strict compliance with the terms and conditions of the Permit.
3. During a DEQ Facility inspection and Facility file review on February 1, 2017, DEQ staff documented the following compliance deficiencies with respect to the monitoring requirements of the Permit:
 - a. The quarterly visual examinations of stormwater quality, required by Part I.A.1.a of the Permit, had not been performed from 2014 through the date of the inspection, February 1, 2017. Part I.A.1.a of the Permit requires E.M. Gray & Son, Inc. to perform and document a quarterly visual examination of a stormwater discharge associated with industrial activity from each outfall.
 - b. The Facility has not analyzed nutrient and sediment sample results as required by Permit Part I.B.7.b.(3)(b). Part I.B.7.b.(3)(b) of the Permit requires E.M. Gray & Son, Inc. to analyze nutrient and sediment data collected in accordance with

subdivision 7 b (1) of this subsection to determine if additional action (i.e., a CB-TMDL action plan) is needed for this permit term.

4. During the DEQ Facility inspection and facility file review on February 1, 2017, DEQ staff documented compliance deficiencies with respect to the SWP3 requirements of the Permit, including the following:
 - a. The Facility could not produce a SWPPP: only a Spill Prevention, Control, and Countermeasure Plan (SPCCP) was available. Part III of the Permit requires facilities to develop and implement a SWPPP for the Facility covered by the Permit. Part III.A.1 of the Permit required E.M. Gray & Son, Inc. to develop and implement a Facility SWP3 under their 2009 Industrial Stormwater General Permit, and to update and implement revisions to the SWP3 within 90 days of the issuance of this permit (i.e., by September 28, 2014). Part III.F.2 of the Permit requires an up-to-date SWPPP to be maintained on-site at the Facility for review by DEQ or EPA.
 - b. The training of Facility employees in stormwater pollution prevention required by Part III.B.4.b.(6) of the Permit had not been documented. Part III.B.4.b.(6) of the Permit requires that Facility employees who "work in areas where industrial materials or activities are exposed to stormwater, and for employees who are responsible for implementing activities identified in the SWP3" be trained in stormwater pollution prevention.
 - c. The routine Facility inspections required by Part III.B.5 of the Permit had not been documented. Part III.B.5 of the Permit requires that E.M. Gray & Son, Inc. perform and document routine Facility inspections for all areas where industrial materials or activities are exposed to stormwater at a minimum quarterly and at least once each year while a discharge is occurring to assess the effectiveness of control measures.
 - d. Annual CSCE's had not been performed for calendar years 2015 and 2016 as required by Part III.E of the Permit. Part III.E of the Permit requires that a CSCE be conducted at least annually, and that the SWP3 shall be modified as necessary, given the evaluation results. Signed compliance evaluation reports shall also be generated and compiled with the SWP3.
5. A response to the inspection report, dated February 14, 2017, was not received by DEQ.
6. Based on the results of the February 1, 2017 inspection and file review, the Board concludes that E.M. Gray & Son, Inc. has violated conditions Part I.A.1.a(1), Part I.B.7.b.(3)(b), Part III, Part III.A.1, Part III.B.4.b.(6), Part III.B.5, Part III.E, and Part III.F.2 of the Permit as noted in paragraphs C.3.a-b, and C.4.a-d of this Order.
7. NRO issued a Notice of Violation for the violations noted above as follows: NOV No. W2017-05-N-0010, issued June 5, 2017.

8. E.M. Gray & Son, Inc. did not respond to DEQ regarding the NOV from June 5, 2017, and a follow-up inspection was performed on July 12, 2018 to reassess compliance.
9. During the July 12, 2018 Facility inspection DEQ staff did not observe a return to compliance for any of the aforementioned violations. Compliance assistance and a permit review was provided by DEQ staff to the Facility staff.
 - a. The annual CSCE had not been performed for calendar year 2017 as required by Part III.E of the Permit. Part III.E of the Permit requires that a CSCE be conducted at least annually, and that the SWP3 shall be modified as necessary, given the evaluation results. Signed compliance evaluation reports shall also be generated and compiled with the SWP3.
10. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board... it shall be unlawful for any person to (1.) Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
11. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
12. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
13. The Department has issued registration to E.M. Gray & Son, Inc. for underground storage tanks (ID # 3013339) in addition to coverage under the VPDES Permit Registration No. VAR051082.
14. The unnamed tributary of the Mattaponi River is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
15. Based on the results of February 1, 2017 and July 12, 2018 Facility inspections, the Board concludes that E.M. Gray & Son, Inc. has violated the Permit, as described in paragraphs C.3.a-b, C.4.a-d, & C.9.a above.
16. In order for E.M. Gray & Son, Inc. to return to compliance, DEQ staff and E.M. Gray & Son, Inc. have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders E.M. Gray & Son, Inc., and E.M. Gray & Son, Inc. agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of \$10,500 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

E.M. Gray & Son, Inc. shall include its Federal Employer Identification Number (FEIN) with the civil charge payment **and** shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, E.M. Gray & Son, Inc. shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of E.M. Gray & Son, Inc. for good cause shown by E.M. Gray & Son, Inc., or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2017-05-N-001 dated June 5, 2017. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, E.M. Gray & Son, Inc. admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. E.M. Gray & Son, Inc. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. E.M. Gray & Son, Inc. declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a

waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by E.M. Gray & Son, Inc. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. E.M. Gray & Son, Inc. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. E.M. Gray & Son, Inc. shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. E.M. Gray & Son, Inc. shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and E.M. Gray & Son, Inc. Nevertheless, E.M. Gray & Son, Inc. agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after E.M. Gray & Son, Inc. has completed all of the requirements of the Order;
- b. E.M. Gray & Son, Inc. petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to E.M. Gray & Son, Inc.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve E.M. Gray & Son, Inc. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

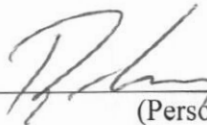
12. Any plans, reports, schedules or specifications attached hereto or submitted by E.M. Gray & Son, Inc. and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of E.M. Gray & Son, Inc. certifies that he or she is a responsible official E.M. Gray & Son, Inc. authorized to enter into the terms and conditions of this Order and to execute and legally bind E.M. Gray & Son, Inc. to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of E.M. Gray & Son, Inc.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, E.M. Gray & Son, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2018.

Thomas A. Faha, Regional Director
Department of Environmental Quality

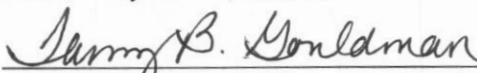
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E.M. Gray & Son, Inc. voluntarily agrees to the issuance of this Order.

Date: 3-26-19 By: , VICE PRESIDENT
(Person) (Title)
E.M. Gray & Son, Inc.

Commonwealth of Virginia
City/County of Caroline

The foregoing document was signed and acknowledged before me this 26 day of March, 2019, by Ryan L. Gray who is Vice President of E.M. Gray & Son, Inc., on behalf of the corporation.

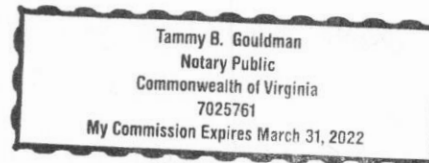

Notary Public

7025761

Registration No.

My commission expires: March 31, 2022

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

E.M. Gray & Son, Inc. shall submit documentation of the following for DEQ to review:

1. **Quarterly Visual Monitoring:** submit to DEQ 2 quarterly visual examination reports for the 6 months following the signature of this Order. These shall be submitted within 10 days of the end of each quarter (i.e., after every 3 calendar months).
2. **Routine Facility Inspections:** submit to DEQ 2 routine facility inspections; or, alternatively, 1 routine facility inspection plus 1 CSCE report (may take the place of one routine inspection) for the 6 months following the signature of this Order. These shall be submitted within 10 days of the end of each quarter (i.e., after every 3 calendar months).
3. **Annual CSCE Reports:** submit to DEQ 1 annual CSCE report within 12 months of the signature of this Order.
4. **SWPPP:** submit a completed (dated/signed) SWPPP for the Facility to DEQ for comment within 90 days of the signature of this Order. This shall include an employee training schedule.
5. **Employee training records:** submit employee training records to DEQ within 30 days of the employee training, but no later than 12 months after signature of this Order.
6. **CB-TMDL:** submit CB-TMDL sampling data analysis to DEQ within 90 days of the signature of this Order.

DEQ Contact

Unless otherwise specified in this Order, E.M. Gray & Son, Inc. shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality
Northern Regional Office
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22193